

REVISED DRAFT RESOLUTION.2

**RESOLUTION NO. ZA2012-0##**

**A RESOLUTION OF THE ZONING ADMINISTRATOR OF THE  
CITY OF NEWPORT BEACH APPROVING MINOR USE PERMIT  
NO. UP2012-022 FOR A HEALTH AND FITNESS FACILITY  
LOCATED AT 1040 IRVINE AVENUE (PA2012-130)**

THE ZONING ADMINISTRATOR OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Orange Theory Fitness, with respect to property located at 1040 Irvine Avenue, and legally described as Lot 11 of Tract 4824, requesting approval of a minor use permit.
2. A minor use permit to allow a 2,915-square-foot health and fitness facility, Orange Theory Fitness, in a currently vacant tenant space within the Westcliff Plaza Shopping Center. The facility would have a maximum of 24 students and four instructors. Required parking is provided within the shopping center at a rate of one parking space per 200 square feet of gross floor area. The facility utilizes a mix of treadmills, rowing machines, benches, free weights, and suspension unit training within the tenant space. Both private and group fitness sessions will be available to patrons of the facility and the proposed hours of operation are from 5:00 a.m. to 9:00 p.m., Monday through Friday, and from 6:00 a.m. to 5:00 p.m., Saturday and Sunday.
3. The subject property is located within the CN (Commercial Neighborhood) Zoning District and the General Plan Land Use Element category is CN (Neighborhood Commercial).
4. The subject property is not located within the coastal zone.
5. A public hearing was held on November 14, 2012 in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Zoning Administrator at this meeting.

SECTION 2. CALIFORNIA ENVIRONMENTAL QUALITY ACT DETERMINATION.

1. This project has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities).
2. This exemption allows for the operation, repair, maintenance and minor alteration of existing buildings. The proposed business is located within an existing building where only minor interior alterations are required to accommodate the new use.

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### SECTION 3. REQUIRED FINDINGS.

In accordance with Section 20.52.020.F(Findings and Decision) of the Newport Beach Municipal Code, the following findings and facts in support of the findings for a use permit are set forth:

#### Finding

A. *The use is consistent with the General Plan and any applicable specific plan:*

#### Facts in Support of Finding

1. The General Plan land use designation for this site is CN (Neighborhood Commercial). The CN designation is intended to provide for a range of retail and service uses developed in one or more distinct centers oriented to serve the needs of and maintain compatibility with residential uses in the immediate area. The Neighborhood Commercial (CN) designation of the General Plan allows health and fitness facilities.
2. The subject property is not part of a specific plan area.

#### Finding

B. *The use is allowed within the applicable zoning district and complies with all other applicable provisions of this Zoning Code and the Municipal Code:*

#### Facts in Support of Finding

1. The site is located in the CN (Commercial Neighborhood) Zoning District. The CN zoning district is intended to provide for areas appropriate for a range of retail and service uses developed in one or more distinct centers oriented to serve primarily the needs of and maintain compatibility with residential uses in the immediate area. The proposed health and fitness facility is consistent with land uses permitted by the CN Zoning District.
2. The proposed use will comply with all applicable development and parking standards.

#### Finding

C. *The design, location, size, and operating characteristics of the use are compatible with the allowed uses in the vicinity:*

#### Facts in Support of Finding

1. Retail uses such as health and fitness facilities are common in the vicinity along Westcliff Drive and serve visitors and residents. The establishment is compatible with the land uses permitted within the surrounding neighborhood.

2. The proposed use is located within the Westcliff Plaza Shopping Center. A Hallmark card store operated in this location between 1985 and 2010 and the tenant space has since been vacant.
3. The Westcliff Plaza Shopping Center abuts residential land uses to the ~~North~~north and east; however, the project site is located along the eastern edge of the shopping center and is separated from these and other uses by parking lots, roadways and other commercial uses.
4. The surrounding commercial uses along Irvine Avenue and Westcliff Drive contain various retail and visitor commercial uses. The proposed health and fitness facility is compatible with the existing and permitted uses in the vicinity
5. The project has been reviewed for compliance with the parking requirements and landscaping standards as provided in Section 20.40.070 (Development Standards for Parking Areas).
6. The hours of operation for the health and fitness facility will be from 5:00 a.m. to 9:00 a.m., Monday through Friday, and from 6:00 a.m. to 5:00 p.m., Saturday and Sunday.

#### Finding

- D. *The site is physically suitable in terms of design, location, shape, size, operating characteristics, and the provision of public and emergency vehicle (e.g., fire and medical) access and public services and utilities:*

#### Facts in Support of Finding

1. Adequate circulation and code required parking are provided within the Westcliff Plaza Shopping Center to accommodate the existing and proposed uses. The shopping center is currently developed with 107,895 square feet total gross floor area and 553 parking spaces are currently provided on site. The number of total parking required for the shopping center, based on the general commercial rate of one parking space per 250 square feet, is 446 parking spaces ( $107,895/250 = 432$  spaces). Several of the existing uses on the property have additional parking requirements. The requirement for the shopping center, including the proposed use (15 spaces) is 522 parking spaces where 553 spaces are provided.
2. Adequate public and emergency vehicle access, public services, and utilities are provided.
3. The tenant improvements to the project site will comply with all Building, Public Works, and Fire Codes. All ordinances of the City and all conditions of approval will be complied with.

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Finding

- E. Operation of the use at the location proposed would not be detrimental to the harmonious and orderly growth of the City, or endanger, jeopardize, or otherwise constitute a hazard to the public convenience, health, interest, a safety, or general welfare of persons residing or working in the neighborhood of the proposed use.*

Facts in Support of Finding

1. The project has been reviewed and includes conditions of approval to ensure that potential conflicts with the surrounding land uses are minimized to the greatest extent possible.
2. The proposed use and hours of operation are compatible with existing uses within the Westcliff Plaza Shopping Center.
3. A health and fitness facility is a common retail use that can be expected within retail/commercial shopping centers such as the Westcliff Plaza Shopping Center.
4. The proposed health and fitness facility will serve the surrounding residential community. This will revitalize the project site and provide an economic opportunity for the property owner to update the retail tenants and services, which best serve the quality of life for the surrounding residential community.

SECTION 4. DECISION.

**NOW, THEREFORE, BE IT RESOLVED:**

1. The Zoning Administrator of the City of Newport Beach hereby approves Minor Use Permit No. UP2012-022 (PA2012-130), subject to the conditions set forth in Exhibit A, which is attached hereto and incorporated by reference.
2. This action shall become final and effective fourteen days after the adoption of this Resolution unless within such time an appeal is filed with the Director of Community Development in accordance with the provisions of Title 20 Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2012.**

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Brenda Wisneski, AICP, Zoning Administrator

## **EXHIBIT "A"**

### **CONDITIONS OF APPROVAL**

#### **PLANNING**

1. Minor Use Permit No. UP2012-022 shall expire unless exercised within 24 months from the date of approval as specified in Section 20.91.050 of the Newport Beach Municipal Code, or an extension is otherwise granted.
2. The Zoning Administrator may add to or modify conditions of approval to this Minor Use Permit or revoke this Minor Use Permit upon a determination that the operation, which is the subject of this Minor Use Permit, causes injury, or is detrimental to the health, safety, peace, comfort, or general welfare of the community.
3. The project shall be in substantial conformance with the approved plot plan, floor plan, and elevations dated October 12, 2012.
4. Any change in operational characteristics, expansion in area, or other modification to the approved plans, shall require an amendment to this Minor Use Permit or the processing of a new use permit.
5. Should the property be sold or otherwise come under different ownership, any future owners or assignees shall be notified of the conditions of this approval by either the current business owner, property owner, or the leasing agent.
6. The project and all tenant improvements must comply with the most recent, City-adopted version of the California Building Code.
7. The applicant shall comply with all federal, state, and local laws. Material violation of any of those laws in connection with the use will be cause for revocation of this Permit.
8. A Special Events Permit is required for any event or promotional activity outside the normal operational characteristics of this health and fitness facility that would attract large crowds, include any form of on-site media broadcast, or any other activities as specified in the Newport Beach Municipal Code to require such permits.
9. All signs on the subject property shall be in conformance with the conditions of approval for the Comprehensive Sign Program as approved per Modification Permit No. MD2001-008 (PA2001-010), Modification Permit No. MD2011-006 (PA2011-050), and the provisions of Chapter 20.67 of the Newport Beach Municipal Code.
10. The use shall be limited to a maximum of four instructors and 24 students at any time during the business hours 5:00 a.m. to 10:00 p.m., daily.

11. The doors and windows shall remain closed at all times that the facility is open for business.

12. The operator of the facility shall be responsible for the control of noise generated on the subject facility. Pre-recorded music may be played in the tenant space, provided exterior noise levels do not exceed the provisions of Chapter 10.26 of the Newport Beach Municipal Code.

13. Prior to implementation of the proposed operation, the applicant shall install noise-abating material to both the interior walls and ceiling of the tenant space which abuts any neighboring tenant space that may be adversely impacted by daytime operations of the facility. The proposed material shall be reviewed and approved by both the Planning and Building Departments for installation requirements.

~~11.~~ 14. Prior to issuance of building permits, the applicant shall submit to the Planning Department an additional copy of the approved architectural plans for inclusion in the use permit file. The plans shall be identical to those approved by all City departments for building permit issuance. The approved copy shall include architectural sheets only and shall be reduced in size to 11-inches by 17-inches. The plans shall accurately depict the elements approved by this Planning Director's Use Permit and shall highlight the approved elements such that they are readily discernible from other elements of the plans.

~~42.~~ 15. To the fullest extent permitted by law, applicant shall indemnify, defend, and hold harmless City, its City Council, its boards and commissions, officials, officers, employees, and agents from and against any and all claims, demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including without limitation, attorney's fees, disbursements and court costs) of every kind and nature whatsoever which may arise from or in any manner relate (directly or indirectly) to City's approval of the Orange Theory Fitness Minor Use Permit including, but not limited to, Minor Use Permit No. UP2012-022 (PA2012-130). This indemnification shall include, but not be limited to, damages awarded against the City, if any, costs of suit, attorneys' fees, and other expenses incurred in connection with such claim, action, causes of action, suit or proceeding whether incurred by applicant, City, and/or the parties initiating or bringing such proceeding. The applicant shall indemnify the City for all of City's costs, attorneys' fees, and damages which City incurs in enforcing the indemnification provisions set forth in this condition. The applicant shall pay to the City upon demand any amount owed to the City pursuant to the indemnification requirements prescribed in this condition.

### **Building Division Conditions**

~~43.~~ 16. The applicant is required to obtain all applicable permits from the City's Building Division and Fire Department. The construction plans must comply with the most recent, City-adopted version of the California Building Code. The construction plans must meet all applicable State Disabilities Access requirements. Approval from the Orange County Health Department is required prior to the issuance of a building permit.

**Public Works Conditions**

- | ~~44.17.~~ County Sanitation District fees shall be paid prior to the issuance of any building permits.